

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

CARLTON BROWN,

Plaintiff,

v.

**CIVIL ACTION NOS.: 3:21-CV-146
5:21-CV-159
(GROH)**

**UNITED STATES OF AMERICA,
R. HUDGINS,
CAPTAIN HAGGAMYER, and
DOE,**

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

Now before the Court is a Report and Recommendation (“R&R”) issued by United States Magistrate Judge Robert W. Trumble. ECF No. 69 in 3:21-CV-146. Pursuant to this Court’s Local Rules, this civil action was referred to Judge Trumble for submission of a proposed R&R. LR Civ P 72.01. Judge Trumble issued the R&R on October 21, 2022, recommending that the Plaintiff’s Complaint against the United States of America pursuant to the Federal Tort Claims Act (“FTCA”) [ECF No. 1 in 5:21-CV-159] be dismissed with prejudice for failure to state a claim upon which relief may be granted and recommending that the Plaintiff’s Complaint against Defendants R. Hudgins, Captain Haggamyer and Doe pursuant to Bivens [ECF No. 1 in 3:21-CV-146] be dismissed with prejudice based on the adverse disposition of the Plaintiff’s FTCA complaint.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a de novo review of those portions of the magistrate judge’s findings to which objection is made. However, the Court is not required to review, under a de novo or any other standard, the

factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of de novo review and of a party's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984).

Objections to Magistrate Judge Trumble's R&R were due within fourteen plus three days of the Plaintiff being served with a copy of the same. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The Plaintiff accepted service of the R&R on October 28, 2022. ECF No. 70. As of the date of this Order, no objections have been filed. Therefore, after allowing additional time for transit in the mail, the Court finds that the deadline to submit objections to the R&R has passed. Accordingly, this Court will review the R&R for clear error.

Upon careful review of the R&R, it is the opinion of this Court that Magistrate Judge Trumble's Report and Recommendation [ECF No. 69] should be, and is hereby, **ORDERED ADOPTED**. For the reasons more fully stated in the R&R, this Court **ORDERS** that the Defendants' Motion to Dismiss [ECF No. 35] be **GRANTED**, that the Plaintiff's Complaint against the United States of America pursuant to the FTCA [ECF No. 1 in 5:21-CV-159] be **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief may be granted and that the Plaintiff's Complaint against Defendants R. Hudgins, Captain Haggamyer and Doe pursuant to Bivens [ECF No. 1 in 3:21-CV-146] be **DISMISSED WITH PREJUDICE** based on the adverse disposition of the Plaintiff's FTCA complaint. Lastly, the Court **ORDERS** that the Plaintiff's Motion to Enter Evidence Into the Record Due to Inadherence and Mistake/Affidavit [ECF No. 67] be

TERMINATED as MOOT.

The Clerk of Court is **DIRECTED** to **STRIKE** both cases from the Court's active docket. The Clerk is **FURTHER DIRECTED** to transmit copies of this Order to all counsel of record herein and mail a copy of this Order to the pro se Plaintiff by certified mail, return receipt requested, at his last known address as reflected on the docket sheet.

DATED: January 17, 2023



GINA M. GROH
UNITED STATES DISTRICT JUDGE